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July 16, 1993

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BY HAND

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex Parte Contacts in CC Docket No. 93-36

Dear Ms. Searcy:

I am writing to advise you that Jeffrey S. Linder, Jeannie Su, and I met today in separate meetings with Donna Lampert and Daniel Gonzalez, and Sara Seidman on behalf of Aeronautical Radio, Inc., and the Tele-Communications Association to discuss the Commission's proposal to streamline tariff regulation of nondominant carriers. A copy of the handout of talking points which we presented is attached hereto.

Very truly yours,

Robert J. Butler

RJB/js

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PREVENTING CARRIERS FROM ABROGATING SERVICE AGREEMENTS

- **User-Carrier Agreements Are Not Mutually Enforceable**

  - Carriers can change the rates, terms, and conditions in long-term contracts through unilateral tariff filings

  - The tariff will take precedence if supported by "substantial cause" -- which is not a major hurdle

  - Users, in contrast, are bound by their service agreements and resulting tariffs

- **The Recent AT&T v. FCC Decision Exacerbates The Risks To Users**

  - By requiring all carriers to file tariffs -- which are subject to minimal review -- the decision substantially increases the exposure to rate increases that violate contractual rate stability commitments and material terms and conditions of service

- By virtue of the tariff precedence doctrine, however, IXCs can engage in conduct that would constitute a breach of a commercial contract, yet still hold the user to its end of a much less attractive bargain

- **Tariff Precedence Harms Users**

  - Users are deprived of certainty, which is essential in setting budgets and comparing bids from competing service providers

  - Many users are not aware that their contracts are not mutually enforceable, and accordingly do not take steps to protect themselves

  - Users who are aware of tariff precedence must expend substantial time and resources seeking imperfect ways to minimize their exposure

    - At best, users get a right to terminate without liability in the event of a rate increase -- but still must incur substantial costs in changing carriers

    - Often, users are not successful in obtaining such a right

    - In other cases, they must make concessions on other terms and conditions simply to gain a right that is unquestioned in an unregulated marketplace

- **Recommended Solutions**

  - The FCC should:

    - Require carriers to notify affected parties before filing a tariff that would abrogate a rate stability commitment or material term or condition of service in an underlying long-term contract or tariff

    - Require carriers to file any such tariff on 120 days' notice

    - Suspend such filings for the full statutory period and require a detailed and compelling demonstration that the increased rates or changed terms and conditions are just and reasonable

    - State that such filings, like above-cap rates, will be found lawful only in "rare instances, if any"

    - Provide that, if any such filing is allowed to take effect, the customer may terminate service without liability, notwithstanding any tariff or contract provision to the contrary

    - Declare unlawful, pursuant to Sections 201(b) and 205 of the Communications Act, tariff filings that seek to abrogate commitments in long-term tariffs not to modify rates, terms, and conditions